Volume 3 | Number 1 Article 2

1-3-1992

Cases, Regulations, and Statutes

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FOOTNOTES

[1] Treas. Reg. § 20.2032A-3(b)(1).

[2] See, e.g., Ltr. Rul. 8244001, Jan. 14, 1981. See generally 5 Harl, **Agricultural Law** § 43.03[2][d][iii] [E],[F] (1991).

[3] Ltr. Rul. 8020011, Feb. 7, 1980.

[4] Ltr. Rul. 8114033, Dec. 31, 1980; Ltr. Rul. 8244001, Jan. 14, 1981.

[5] IR-147, April 27, 1981.

[6] Pub. L. 97-34, Sec. 421(j)(l), amending I.R.C. § 2032A(g).

[7] I.R.C. § 2032A(e)(2).

[8] I.R.C. § 2032A(e)(1).

[9] Treas. Reg. § 20.2032A-8(a)(2). See Ltr. Rul. 8249012, Aug. 23, 1982 (successive interests in farmland all received by qualified heirs).

[10] Treas. Reg. § 20.2032A-8(a)(2). See Ltr. Rul. 8249012, Aug. 23, 1982 (successive interests in farmland all received by qualified heirs).

[11] Ltr. Rul. 8044018, July 30, 1980 (remainder interest to non family members precluded special use valuation for life estate to spouse); Ltr. Rul. 8435007, April 24, 1984 (remainder interest passed to both qualified and non qualified heirs; special use valuation not allowed); Ltr. Rul. 8337015, June 7, 1983 (trustee discretion to distribute to non family member barred special use valuation).

[12] Rev. Rul. 81-220, 1981-2 C.B. 175.

[13] Ltr. Rul. 8349008, Aug. 23, 1983.

[14] Rev. Rul. 82-140, 1982-2 C.B. 208.

[15] Ltr. Rul. 8441006, June 26, 1984. See Treas. Reg. § 20.2032A-8(a)(2) (precludes special use value election if property interests vest in family member subject to being divested in favor of non family member). Compare Ltr. Rul. 8321007, Feb. 2, 1983 (vested remainder interest subject to being divested did not preclude special use valuation) with Ltr. Rul. 8332012, April 22, 1983 (special use valuation disallowed because of low probability that property could pass to non qualified heir); Ltr. Rul. 8346006, July 29, 1983 (same); Ltr. Rul. 8349008, August 23, 1983 (same).

[16] Ltr. Rul. 8407006, Nov. 9, 1983 (under agreement, qualified heir received land and charity received cash but treated by IRS as purchase by qualified heir from charity).

[17] Est. of Davis v. Comm'r, 86 T.C. 1156 (1986) ("exceedingly remote" chance that property would pass to non qualified heir; regulation invalid); Est. of Pliske v. Comm'r, T.C. Memo. 1986-311 (same); Est. of Clinard v. Comm'r, 86 T.C. 1180 (1986) (regulation invalid to extent election precluded where qualified heir possessed life estate and special power of appointment).

[18] Est. of Thompson v. Comm'r, 864 F.2d 1128 (4th Cir. 1989).

[19] See Smoot v. Comm'r, 892 F.2d 597 (7th Cir. 1989), *aff'g*, 88-1 U.S.T.C. ¶ 13,748 (C.D. Ill. 1987) (special use election allowed where only remote possibility that contingent remainder interest in farmland could pass to non qualified heir and where surviving spouse had limited power of appointment exercisable in favor of non qualified heirs; exercising power in favor of persons who are not qualified heirs would make power holder liable for recapture tax on interests so appointed).

[20] Ltr. Rul. 8643005, July 18, 1986 (special use valuation allowed where chance remote that person who was not qualified heir would receive land). See Ltr. Rul. 8713001, Dec. 3, 1986 (special use valuation allowed where chance of non qualified heirs receiving interest in land removed by state law presumptions that remainder interests vested in life interest holders as soon as possible).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

EASEMENT BY PRESCRIPTION. The plaintiff claimed an easement by prescription over the defendant's road used by the plaintiff to haul timber. The court held that the only evidence plaintiff provided of adverse use of the road, actions to widen the road, were insufficient to overcome the presumption that the use was permissive. The court cited testimony of the plaintiffs that permission from the defendants was sought in past years to work on the road and that the plaintiffs never claimed any right to the road before the instant suit. **Hollis v. Tomlinson, 585 S.2d 862 (Ala. 1991)**.

ANIMALS

ESTRAYS. The defendant was convicted under Ariz. Rev. Stat. § 24-246(A) for shooting a stray horse owned by a neighbor. The defendant argued that Ariz. Rev. Stat. § 24-246(D) provided an absolute defense in that the horse was an estray. The court held that the exception provided by Section 246(A) applied only to the "taking up" of estrays and not the killing of them. **State v. Gallagher, 818 P.2d 187 (Ariz. Ct. App. 1991)**.

BANKRUPTCY

GENERAL

AVOIDABLE LIENS. The debtor was a grain warehouse and storage facility and under North Dakota law producers with grain stored at the facility were granted a lien on grain deposited at the debtor. The Chapter 7 trustee sought to avoid the producers' statutory liens under Section 545(2) as a bona fide purchaser. The court held that the statutory lien, under the state law, was effective except as to purchasers in the ordinary course of business, something more than bona fide purchasers. Because the trustee's avoidance powers were as a bona fide purchaser, the lien remained effective as to the trustee and the liens were not avoidable. ***In re* Woods Farmers Co-op. Elev. Co., 946 F.2d 1411 (8th Cir. 1991)**.

ESTATE PROPERTY. Within 180 days after the debtor filed bankruptcy, the debtor's aunt died leaving the debtor a bequest of real and personal property. The estate was not admitted to probate until after 180 days after the bankruptcy petition and the debtor argued that under state law, the debtor was not entitled to the bequests until after the will was admitted to probate. The court held that the bequests were estate property because under state law the title to the property passed under the will upon the death of the decedent, with confirmation upon admission of the will to probate. ***In re* Chenoweth, 132 B.R. 161 (Bankr. S.D. Ill. 1991)**.

EXEMPTIONS. The debtor, a lawyer, claimed a rural homestead exemption under Tex. Prop. Code § 41.002 for the debtor's residence and 104 acres of land used for various agricultural purposes, including enrollment in the federal Conservation Reserve Program. The residence was also used as the debtor's business office. A creditor objected to the exemption, arguing that the land was not used to economically support the debtor. The court held that the property was eligible for the rural homestead exemption because the property was rural in character and used as the debtor's residence; the court rejected the requirement that the land be used to economically support the debtor. ***In re* Mitchell, 132 B.R. 553 (Bankr. W.D. Tex. 1991)**.

CHAPTER 7

ELIGIBILITY. The decedent/debtor granted a son a power of attorney in which the son was expressly empowered to file for relief under Chapter 7. Two days after the filing, the debtor died and the son continued the case. The court held that dismissal would be inappropriate because the dismissal would prejudice priority creditors and would deprive the debtor's estate of rights to recover prepetition transfers. ***In re* Gridley, 1312 B.R. 447 (Bankr. D. S.D. 1991)**.

FEDERAL TAXATION

ALLOCATION OF PLAN PAYMENTS FOR TAXES. The only outstanding claims against the debtor were three claims for taxes assessed against the debtor as a responsible person for three corporations. The debtor argued that under Section 726(b), the IRS was required to allocate payments evenly among the three claims. The court held that Section 726(b) did not apply where several claims were held by only one creditor. ***In re* Leonard, 132 B.R. 226 (Bankr. D. Conn. 1991)**.

The debtor's Chapter 7 plan provided for payment of the debtor's withholding tax liabilities before payment of the debtor's individual tax liabilities. The court held that Chapter 7 plan payments were involuntary and the IRS was not required to allocate the tax payments according to the plan. The court refused to use its equitable powers in the case because the allocation was not necessary for a successful completion of the liquidating plan. ***In re* Optics of Kansas, Inc., 132 B.R. 446 (Bankr. D. Kan. 1991)**.

AUTOMATIC STAY. During the debtor's bankruptcy case, the IRS made an assessment of Section 6672 penalty for failure of the debtor as a responsible person to pay employment withholding taxes. The court held that the assessment was void for violation of the automatic stay. **Olson v. U.S., 91-2 U.S. Tax Cas. (CCH) ¶ 50,555 (D. Neb. 1991), *aff'g*, 101 B.R. 134 (Bankr. D. Neb. 1988)**.

The debtor had filed for Chapter 7 and had received a discharge. After the discharge, the debtor received a deficiency notice and obtained permission to reopen the case from the bankruptcy court. The Tax Court ruled that the reopening of the bankruptcy case did not reinstate the automatic stay without an order from the bankruptcy court. **Allison v. Comm'r, 97 T.C. No. 36 (1991)**.

CLAIMS. The debtor included federal tax claims, including a claim for withholding taxes, in the schedules filed with the petition and the IRS filed a timely claim for income taxes. The IRS filed a late amended claim including additional amounts for unpaid withholding taxes and the trustee objected, arguing that the amended claim was improper because the claim for withholding taxes was a new claim. The court held that the amended claim was not allowed to the extent of the new claim for withholding taxes because the claim did not relate to the timely income tax claim and the debtor gave the IRS notice of the debtor's relationship with the business in the schedule of claims. ***In re* Vecchio, 132 B.R. 239 (Bankr. E.D. N.Y. 1991)**.

DISCHARGE. The debtor claimed that a late filed income tax return for 1982 was mailed to the IRS in 1984, more than three years before filing for bankruptcy. However, the IRS had no record of receiving the return and had constructed a substitute return. The court held that for the purposes of Section 523, a filing of a late return is not accomplished merely by mailing a return but must also include receipt by the IRS. **U.S. v. D'Avanza, 132 B.R. 462 (M.D. Fla. 1991)**.

The IRS filed substitute returns for the debtor's taxable years occurring more than three years before the bankruptcy filing. The IRS also assessed penalties for those tax years. The court held that the tax liability for the tax years for which a substitute return was filed is not dischargeable but the penalties resulting from those tax years were dischargeable. ***In re* Bergstrom, 91-2 U.S. Tax Cas. (CCH) ¶ 50,558 (10th Cir. 1991)**.

ESTIMATED TAXES. In the tax year before filing bankruptcy, the debtor sold some assets and made payments of estimated taxes on the taxable gain from the sales. After the petition was filed, the IRS assessed the taxes for the taxable year and refunded a small portion of the estimated tax payments. The trustee sought return of the estimated tax payments under Section 542 and 549. The court held that the debtor had insufficient interest in the estimated tax payments as of the date of the petition to include the payments in estate property; therefore, the payments were not recoverable under Section 542 or 549. ***In re* Halle, 132 B.R. 186 (Bankr. D. Colo. 1991)**.

Under the debtor's Chapter 11 plan, the IRS claim for pre-petition withholding taxes would be paid in equal monthly installments of principal and interest with a balloon payment at the end of the sixth year. The IRS argued that under Section 1129(a)(9)(C), the plan had to pay the claim in equal payments for the life of the plan, with no balloon payment. The court held that Section 1129(a)(9)(C) did not prohibit balloon payments so long as the monthly plan payments included payment on principal and interest. ***In re* Volle Elec., Inc., 132 B.R. 365 (Bankr. C.D. Ill. 1991)**.

After the debtors' Chapter 13 plan was confirmed, the IRS moved to reconsider the confirmation and classification of pre-petition interest. The Bankruptcy Court granted the reconsideration request, vacated the confirmation of the plan and reclassified the pre-petition interest as a priority claim. The court held that a confirmed plan was res judicata as to all claims and that the reconsideration and vacating of the plan were improper where no fraud was alleged. **Young v. I.R.S., 132 B.R. 395 (S.D. Ind. 1990)**.

POST-PETITION INTEREST. Prior to the debtor's filing for bankruptcy, the IRS assessed the debtor for fraud penalties. The IRS included the fraud penalty claim in an amended claim in the bankruptcy case. The IRS sought interest on the unpaid fraud penalties from the date of the amended claim, arguing that the amended claim functioned as notice to the debtor. The court held that the amended claim did not meet the notice requirements for assessing interest on the penalties because the amended claim was not delivered to the debtor's business address. **Matter of Resyn Corp., 945 F.2d 1279 (3d Cir. 1991)**.

TAX LIENS. The debtor had operated a business as a corporation, but in 1984, the state revoked the corporation's certificate for failure to pay annual registration fees. Neither the debtor nor the IRS was aware of the termination of incorporation. The IRS filed a tax lien for taxes incurred by the business after the termination of incorporation and filed the lien under the name of the corporation, Hudgins Masonry, Inc., instead of the debtor's name Hudgins, Michael. The debtor sought to avoid tax lien as unperfected because it was filed under the wrong name. The court held that the lien was perfected because the debtor continued to do business as Hudgins Masonry after loss of incorporation and because the lien was filed on the same page as entries for individuals named Hudgins. **Hudgins v. I.R.S., 132 B.R. 115 (E.D. Va. 1991)**.

TAXABLE YEAR. The debtors, calendar year taxpayers, filed for bankruptcy on December 15, 1988, but did not make the I.R.C. § 1398 election to terminate their taxable year as the date of the petition. The debtors argued that the 1988 taxes were a pre-petition claim because the tax liability was incurred pre-petition. The court ruled that because the Section 1398 election was not made, the 1988 tax liability was a post-petition tax claim because the taxes were not due until after the end of the taxable year and after the petition was filed. **Moore v. I.R.S., 132 B.R. 533 (Bankr. W.D. Pa. 1991)**.

CONTRACTS

MERCHANT. The plaintiff was an agricultural commodities dealer and the defendant was a farmer who entered into an oral contract with the plaintiff for the sale at a set price of grain to be harvested later in the year. The plaintiff sent the defendant written confirmation of the oral agreement but the defendant did not sign the confirmation and informed the plaintiff several months later of the defendant's intent not to perform under the oral contract. In defense against the contract the defendant plead the statute of frauds because of the lack of a signed contract. The plaintiff argued that Colo. Rev. Stat. § 4-2-201(2) took the contract out of the statute of frauds because the oral contract was between merchants and was confirmed by a writing. The court held that the defendant was a merchant as to the goods involved because the defendant had been a farmer for over 20 years and had extensive experience with futures contracts. **Colorado-Kansas Grain v. Reifschneider, 817 P.2d 637 (Colo. Ct. App. 1991)**.

ENVIRONMENT

SOLID WASTE DISPOSAL. The plaintiffs operated a tree farm and deposited woody waste materials from the operation in windrows for composting. The plaintiffs also accepted for a fee additional woody waste materials from other businesses in the area. The defendant county enacted an ordinance requiring residents to obtain a permit for operating solid waste disposal facilities. The plaintiffs argued that the ordinance exceeded the county's authority, the woody material was not solid waste, and the operation was recycling and exempt from regulation. The court held that the ordinance was within the county's authority to govern land use, the woody material from outside parties was waste as to those parties and that the operation was not recycling because the composting took an indefinite period to complete. **Ticonderoga Farms, Inc. v. County of Loudoun, 409 S.E.2d 446 (Va. 1991)**.

FEDERAL AGRICULTURAL PROGRAMS

APPEALS. The ASCS has issued interim regulations establishing a National Appeals Division to hear administrative appeals concerning federal farm program determinations by DASCO, ASCS or CCC. The NAD would be the final reviewing authority in the administrative appeals process. The new regulations are effective as of November 22, 1991 for non-final decisions made after November 28, 1990. **56 Fed. Reg. 59207 (Nov. 25, 1991), amending 7 C.F.R. Part 780**.

COTTON. The CCC has adopted as final regulations governing the upland cotton first handler and user marketing certificate programs. **56 Fed. Reg. 59651 (Nov. 26, 1991)**.

MEAT AND POULTRY PRODUCTS. The FSIS has issued proposed regulations amending the meat and poultry products inspection regulations by permitting voluntary nutrition labeling of single-ingredient, raw meat and poultry products and establishing mandatory nutrition labeling for all other meat and poultry products except products used for further processing. **56 Fed. Reg. 60302 (Nov. 27, 1991)**.

PRODUCTION ADJUSTMENT PROGRAMS. The plaintiff signed a contract, Form CCC-477, to participate in the 1986 Wheat and Feed Grains Program which required the plaintiff to certify the number of acres to be planted to sorghum. A field audit report stated that the plaintiff had not planted sorghum on acres certified in the contract and the county and state ASCS offices denied the plaintiff payments and assessed liquidated damages. In reviewing the DASCO determination upholding the ASCS ruling, the court found that DASCO's reliance on the field audit was a rational basis for denial of program benefits and liquidated damages. **Ryder Farms, Inc. v. U.S., 24 Cls. Ct. 278 (1991)**.

SUGAR. The CCC has issued proposed regulations implementing amendments by FACTA 1990 to the marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose produced from corn for fiscal years 1992 through 1996. **56 Fed. Reg. 61191 (Dec. 2, 1991)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The taxpayer established an irrevocable charitable unitrust with income to be paid to the taxpayer for life, then to the taxpayer's sister for life, then to the taxpayer's wife for life, with the remainder to a charitable organization. The taxpayer sought a ruling that an amendment of the trust by agreement of all beneficiaries to change the order of income payments to the sister for life and then to the taxpayer for life, then to the wife with the remainder to the charitable organization, would not disqualify the trust as a charitable remainder unitrust. The IRS ruled that because the trust would not qualify as a charitable unitrust if the taxpayer retained a power to amend the trust, the trust would also be disqualified if the taxpayer amended the trust in the manner proposed. **Ltr. Rul. 9143030, July 25, 1991**.

DISCLAIMER. The taxpayer was a beneficiary and trustee of a testamentary trust. The taxpayer had a general testamentary power to appoint the trust corpus to a trust for the taxpayer's children under different terms than the original trust. The IRS ruled that the disclaimer of the general power of appointment and the power to appoint trust corpus to a trust with different terms would be a qualified disclaimer. **Ltr. Rul. 9147050, Aug. 21, 1991**.

GROSS ESTATE. A revocable trust created by the decedent sold a 5 percent interest in the decedent's residence to a trust created by and for the benefit of the decedent's children. The decedent's trust then leased the sold portion from the children's trust for 10 years for 5 percent of the fair rental value of the property. The ten years exceeded the life expectancy of the decedent. The estate reduced the value of the decedent's residence for estate tax purposes by almost 40 percent. The IRS ruled that because the lease period exceeded the decedent's life expectancy and the decedent could terminate the lease by revoking the trust, the decedent retained an interest in the 5 percent portion of the property and that the 5 percent portion was included in the decedent's gross estate. The IRS also ruled that the estate could reduce the value of the property by the amount of consideration paid for the 5 percent portion by the children's trust. In addition, the 5 percent portion was included in the gross estate under Section 2035(a) because the property was includible in the estate under Section 2038 because third parties had a continuing interest in the revocable trust after the decedent died. **Ltr. Rul. 9146002, July 31, 1991**.

MARITAL DEDUCTION. The decedent's will bequeathed to the surviving spouse in trust stock in a corporation controlled by the decedent. The trustee had the power to replace unproductive assets but could not sell stock without authorization from the decedent's son. The stock had not produced any dividends for five years and the son had control over the declaration of dividends. The decedent's sons also were granted a 24 month option to purchase the stock in the marital trust for less than 10 percent of the fair market value and using promissory notes payable over five years at 9 percent interest. The IRS ruled that the stock transferred was not eligible for the marital deduction because third parties had the power to divest the trust of much of its value and the value of the remaining stock could not be determined because of the power held by third parties over the corporation. **Ltr. Rul. 9147065, July 12, 1991**.

The decedent's will created a residuary trust for the surviving spouse with income and principal to be distributed to the beneficiary for life. The trust also continued a provision for distribution of trust principal to the decedent's children but the trustee obtained a state probate court determination removing the provision for indefiniteness. The trustee also obtained a court order interpreting the trust to require income distributions at least annually but the IRS examined state common law to determine that the trust was required to distribute all income at least annually, thus qualifying the trust as QTIP. **Ltr. Rul. 9148018, Aug. 26, 1991**.

The decedent's will bequeathed property in trust to the surviving spouse and children, with 75 percent of the trust income to be distributed to the surviving spouse. The surviving spouse was a citizen of Canada but a U.S. resident. The trustee petitioned state court for reformation of the trust to require at least one U.S. trustee, to require distribution of income at least annually and to require the trustee to convert nonproductive property to productive property. The decedent's children executed qualified disclaimers of their interests in the trust. The IRS ruled that the reformed trust after the disclaimers was a qualified domestic trust eligible for the marital deduction. **Ltr. Rul. 9148021, Aug. 26, 1991**.

POWER OF APPOINTMENT. Under a testamentary trust, the trustee had the power to distribute trust corpus to the beneficiaries "to provide for support, maintenance, and care" of the beneficiaries. The IRS ruled that the trustee's power was subject to an ascertainable standard such that the power was not a general power of appointment over trust corpus. **Ltr. Rul. 9148036, Aug. 29, 1991**.

POWER OF ATTORNEY. The decedent had granted a son "durable" power of attorney and had participated in a series of annual gifts with the surviving spouse as part of estate planning. After the decedent became incompetent, the son exercised the power of attorney to make additional gifts of the decedent's property. The IRS argued that because the durable power of attorney did not expressly grant the son the power to transfer the decedent's assets in gifts, the gifts were revocable and included in the decedent's gross estate. The Tax Court had held that the circumstances of the decedent's participation in the gifts as part of an estate plan demonstrated that the durable power of attorney authorized the son to make the gifts. The appellate court, however, ruled that durable powers of attorney would be carefully scrutinized to require express authority for the attorney in fact to make gifts; therefore, because the power of attorney did not expressly grant the son the power to make the gifts, the gifts were revocable and included in the decedent's estate. **Est. of Casey v. Comm'r, 91-2 U.S. Tax Cas. (CCH) ¶ 60,091 (4th Cir. 1991)**.

SPECIAL USE VALUATION. A corporation owning farm land liquidated and distributed its assets to the shareholders. One of the shareholders had previously died and the decedent's stock was valued under the special use valuation provisions. The other shareholders were qualified heirs. The recognition of gain by the corporation was determined by Section 336 and the shareholders elected to recognize gain under either Section 333 or 331. The IRS ruled that gain under Sections 331, 333 and 336 must be determined using the fair market value of the assets and stock involved and not values determined using the special use valuation used by the decedent's estate. **Ltr. Rul. 9146001, July 28, 1991**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The taxpayers were held to be subject to alternative minimum tax although they had only one item of tax preference, a capital gains deduction, and were not "wealthy." **Martinez v. Comm'r, T.C. Memo. 1991-585**.

C CORPORATIONS

AFFILIATED CORPORATIONS. The taxpayer was a corporation owning timberland which entered into agreements with an affiliated corporation to sell timber rights and to supply the affiliated corporation with logs for processing into lumber. The court held that the agreements were unenforceable for lack of specificity; therefore, the timber cut by the taxpayer corporation and sold to the affiliated corporation belonged to the taxpayer corporation and was eligible for capital gains treatment under Section 631(a). The court also held that the enforceability of the agreements was not changed by the corporations generally following the terms of the agreements. ***In re* Brazier Forest Products, Inc., 91-2 U.S. Tax Cas. (CCH) ¶ 50,561 (Bankr. W.D. Wash. 1991)**.

STOCK REDEMPTION. As part of an automobile distributorship agreement, the corporation was required to redeem all stock. The corporation deducted the purchase price of the stock and legal expenses over the five years of the agreement. The Tax Court refused to follow *Five Star Mfg., Co. v. Comm'r, 66-1 U.S. Tax Cas. (CCH) ¶ 9191 (5th Cir. 1966)*, and held that the purpose of the stock purchase did not change the nature of the transaction and that the purchase of the stock was a capital expenditure. **Frederick Weisman Co. v. Comm'r, 97 T.C. No. 39 (1991)**.

COOPERATIVES. A nonexempt cooperative which manufactured and distributed fertilizer for its patrons had interest income from investment of cash in money market instruments having a maturity of 30 days or less and instruments with maturity over 30 days. The court held that the interest from instruments with maturities of 30 days or less was patronage sourced income but that the instruments with longer maturity were not because the cooperative had no business purpose for the longer term investments. **CF Industries, Inc. v. Comm'r, T.C. Memo. 1991-568**.

EMPLOYEE BENEFIT PLANS. The IRS has issued a list of industry categories for determining whether an employer is treated as operating qualified separate lines of business for purposes of I.R.C. § 414(r). The categories include:

"1. Food and Agriculture. Food, beverages, tobacco, food stores and restaurants. . .

3. Forest Products. Pulp, paper, lumber and wood products (including furniture)."

Rev. Proc. 91-64, I.R.B. 1991-50, 6.

INVESTMENT TAX CREDIT. The taxpayer owned truck tractors and trailers which were used in the taxpayer's sole proprietorship trucking business. The taxpayer incorporated the business but remained the owner of the trucks and trailers. The court held that the taxpayer was entitled to investment tax credit for the vehicles after incorporation because the ownership and use of the vehicles did not change. **Belitsky v. Comm'r, T.C. Memo. 1991-577**.

LIKE-KIND EXCHANGES. The IRS has announced that it will now issue determination letters on the issue of like-kind property in a transaction involving an exchange of assets of similar businesses. **Rev. Proc. 91-61, I.R.B. 1991-48, 86**.

MINORS. The taxpayer was a minor under age 14 who had unearned income from investment of funds awarded in a personal injury action. The court held that the income was taxable at the highest rate assessed against the taxpayer's parents' income. **Carlton v. U.S., 91-2 U.S. Tax Cas. (CCH) ¶ 50,562 (N.D. Miss. 1991)**.

RETIREMENT PLANS. For plans beginning in November 1991 the weighted average is 8.47 with the permissible range of 7.63 to 9.32 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 91-39, I.R.B. 1991-48, 86**.

The IRS has adopted as final regulations governing qualified retirement plans as to the rules for determining whether an employer operates separate lines of business for purposes of applying the minimum coverage requirements of Section 410(b) and the minimum participation requirements of Section 401(a)(26). **56 Fed. Reg. 63410, 63420 (Dec. 4, 1991)**.

RETURNS. The IRS has issued Form 8829 "Expenses for Business Use of Your Home" to be used in calculating and reporting the allowable deductions for business use of a home.

S CORPORATIONS

SHAREHOLDER'S BASIS. The taxpayers were shareholders in an S corporation and personally guaranteed loans made to the corporation by a bank. The IRS disallowed the shareholder's share of corporation net operating losses because the shareholders' shares of the guarantees were not includible in the shareholders' stock basis. The court held that guarantees of loans made to the corporation were not sufficient economic outlay to be included in the shareholders' stock basis. **Uri v. Comm'r, 91-2 U.S. Tax Cas. (CCH) ¶ 50,556 (10th Cir. 1991), *aff'g*, T.C. Memo. 1989-58**.

TRUSTS. A trust owning 600 shares of stock was amended to create separate trusts for each beneficiary with income and corpus to be distributed to the beneficiary and with the beneficiary having a special testamentary power of appointment over trust corpus. Unappointed corpus would pass to the beneficiaries' issue in trusts similar to the new trusts. The IRS ruled that the new trusts would be qualified Subchapter S trusts. **Ltr. Rul. 9147024, Aug. 16, 1991**.

STOCK OPTION PLANS. The IRS has adopted as final regulations governing shareholder approval of incentive stock option plans. **56 Fed. Reg. 61159 (Dec. 2, 1991), adding Treas. Reg. § 1.422-5**.

TRUSTS. The taxpayer established an irrevocable trust which provided for annual fixed monetary distributions plus additional payments such that the annual distribution equaled the income from the trust. The trust was funded with S corporation stock and the trustee had the power to make early distributions which commuted future payments from the trust. The trust terminated upon the death of the grantor or distribution of all amounts due. The trustee terminated the trust by distributing trust corpus to the grantor sufficient to cover all amounts due. The IRS ruled that because the grantor was considered the owner of the trust, no gain was recognized from the distribution of stock to the grantor. Because the stock basis did not change while held by the trust, the basis of the stock to the grantor remained the same as when contributed to the trust. **Ltr. Rul. 9146025, Aug. 14, 1991**.

Upon the death of the life beneficiary, the trust corpus was distributed to separate trusts for the beneficiary's issue which were to be immediately terminated and the trust corpus distributed, unless the corpus was threatened with seizure from third parties. After the death of the beneficiary, the trustee distributed the corpus to the separate trusts and terminated all of them except one, which was threatened by creditors of the beneficiary. The assets of that trust were sold and gain recognized. The proceeds were transferred to a court. The IRS ruled that the deposit was a distribution to the beneficiary and that the gains were includible in the beneficiary's income in the taxable year including the last day of the taxable year of the terminated trust for that beneficiary. **Ltr. Rul. 9147022, Aug. 16, 1991**.

WITHHOLDING TAXES. The IRS has announced an extension to January 1, 1992, for beginning backup withholding for payors who have received two incorrect taxpayer identification numbers (TIN) in three years. Backup withholding may be stopped if the payor receives documentation from the IRS or SSA of the correct TIN. After September 1, 1992, verification must be made on Form SSA-7028 or Letter 147C. **Notice 91-40, I.R.B. 1991-50, 20**.

PRODUCTS LIABILITY

AUGER. The case involved a portable grain auger which was modified with an extension by the employer of the plaintiff. The plaintiff was injured by the exposed extension auger and sued the manufacturer, assembler and seller of the portable auger under negligence for failure to warn and strict liability for defective design. The trial court had instructed the jury that modification of the product barred liability by the defendants and the jury returned a special verdict for the defendants. The court held that the instruction was prejudicial error in that modification did not bar liability by the manufacturer and seller unless the modification was unforeseeable. **Oanes v. Westgo, Inc., 476 N.W.2d 248 (N.D. 1991)**.

SECURED TRANSACTIONS

COLLATERAL. The debtors had granted a security interest in crops and other personal property to a creditor which had perfected the security interest. The debtors subsequently granted a security interest in farm equipment and livestock which the court held to be fraudulent because not supported by consideration. The court held that although the security interest in the crops was invalid under N.D. Cent. Code § 35-05-04, because the security agreement covered crops and other personal property, the security interest in the other personal property was valid. **Prod. Credit Ass'n of Mandan v. Rub, 475 N.W.2d 532 (N.D. 1991)**.

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PRIORITY. The plaintiff PCA held a security interest in the debtor's cattle and the debtor placed the proceeds of the sale of the cattle in an escrow account. Because of difficulties in obtaining payment for some of the cattle, the debtor hired the defendants to recover those proceeds and the defendants claimed a lien against the proceeds they recovered. The court held that the PCA security interest had priority but that factual issues remained as to whether the PCA agreed to allow priority to the fees incurred by the defendants in recovering some of the proceeds. **Prod. Credit Ass'n of the Midlands v. Wynne, 474 N.W.2d 735 (S.D. 1991)**.

CITATION UPDATES

In re **Hanson, 132 B.R. 406 (Bankr. E.D. Mo. 1991)** (tax lien), see Vol 2, p. 188.

Est. of Klein v. Comm'r, 946 F.2d 1218 (6th Cir. 1991) (marital deduction), see Vol. 2, p. 197.

In re **McLean Indus., Inc., 132 B.R. 267 (Bankr. S.D. N.Y. 1991)** (net operating losses), see Vol. 2, p. 179.

In the next issue: "Reporting Government Farm Program Payments" by Dr. Neil Harl

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